IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6920 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ATUL RAMBHAI PATEL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 6920 of 2002

MS BANNA DATTA ON BEHALF OF

MR MC BAROT for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/10/2002

ORAL JUDGEMENT

The present petition has been filed by the detenu who has been detained under the provisions of Gujarat

Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 19/5/2002 passed by the Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and learned AGP and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the three offences registered against the detenu under the Bombay Prohibition Act. The learned advocate for the petitioner has further submitted that for passing the detention order, the detaining authority has also relied upon statements of three witnesses. She has further submitted that the last offence has been registered on 5/5/2002, while the statement of one witness, copy of which is produced on page No.47 of the compilation, has been recorded on 4/4/2002 and the said statement has been verified on 9/4/2002 and thereafter on 13/5/2002, which shows non-applicaton of mind on the part of the detaining authority which vitiates the impugned detention order and hence the impugned order of detention is required to be quashed and set aside.

4. It appears that the statements of the witnesses have been recorded by the detaining authority prior in time which shows non-application on the part of the detaining authority and, hence, the impugned order of detention cannot be sustained and is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 19/5/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Atul Rambhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik